CF0000058135

(2)

CRA 960 /94

XII-89/(Jail)
C. J. P. R /7-86/500

Division Bench (Criminal)

APPEAL OF PRISONER

No 1965/49 Name हेमसिंह उर्फ परदेशी

Father's name बहोरन सिंह

Residence अशोकनगर सरकण्डा बिलासपुर (म०प्र०) Age 40 वर्ष

Sentenced to आजीवन कारावास on 22-23.3.1994 SI No 303/93

दंड: माह सश्रम कारावास एवं रु० 250/-

Under section 302 भा०दं०वि० एवं 27 शस्त्र अधिनियम by माननीय न्यायालय षष्ठम अतिरिक्त सत्र न्यायाधीश, बिलासपुर (म०प्र०),

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appelate court will not proceed with the case for seven days unless the legal paactitioner appears earlier. If the legal practitioner does not appear within seven days, he may not be heard at all if the prisnor states that he does not wish to be represented by legal practitioner, the court may proceed at once wich the case and will not be obliged to give at hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement बन्दी ने निर्णय दिनांक को न्यायालय से स्वयं प्राप्त किया है।
2. Date of which copy received 25/3/94
3. Date on which Appeal sent 30.3.1994
4. Whether the prisoner wishes to be represented or not- (yes/~~No~~)

No. 1965/49 Name हेमसिंह उर्फ परदेशी उ०प० बहोरन सिंह

Confined in जिला जेल प्रथम श्रेणी, बिलासपुर (म०प्र०),

No 139/91-क०/94/बिलासपुर dated 30.3.1994 198

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ रजिस्ट्रार, माननीय उच्च न्यायालय, मध्यप्रदेश, जबलपुर

together with a copy of Judgement and order passed in the case for favour of transmission to the proper Appelliate Court.

30/3/94
अधीक्षक
Superintendent
जिला जेल प्रथम श्रेणी
बिलासपुर (म०प्र०)

Date of receipt in C. J. M. S. Office

Date of receipt of record to accompany the)
The memo of Appeal of the Appellate Court.)

No. Dated 198

Forwarded to the

C J Magistrate

Date of receipt in Appellate Court

(P. T O)

High Court of Madhya Pradesh
JABALPUR
Recd. on 8 APR 1994
Registration No. 313

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आदेश पत्रक

मामला क्रमांक Cr.Rpp. 960/94 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

20.01.2006

Smt. Hamida Siddiqui, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

Accused/appellant Hemsingh @ Pardesi has preferred this appeal questioning the legality of judgment of conviction and order of sentence dated 22.3.1994 passed by learned 6th Additional Sessions Judge, Bilaspur in Sessions Trial No.303/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of his wife Janki Devi convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Learned Additional Sessions Judge has also convicted the accused/appellant under Section 27 of the Indian Arms Act and sentenced him to undergo rigorous imprisonment for six months and pay fine of Rs.225/-, in default of payment of fine to further undergo simple imprisonment for one month.

The prosecution case, in brief, is that on 20.04.1993 at about 6.30 a.m. Sumitra Devi (PW-1) lodged a report (Ex.P-1) in the Police Station Sarkanda, Bilaspur to the effect that her elder daughter Janki Devi was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

married to Hemsingh @ Pardesi of Village Kirari, Police Station Masturi. She has got two sons and two daughters. Today at about 5.00 a.m. his son-in-law Hemsingh i.e. accused/appellant herein came to his house and after waking up her, asked her to keep his two year old daughter Bhawna. Upon which she asked from him where is Janki Devi, then he replied that you may go and see her at residence, thereafter she again asked him as to whether he has killed her, on this Hemsingh evasively replied whatever you understand. Raju (PW-5) son of accused Hemsingh, aged about 15 years, who was residing with PW-1 Sumitra Devi and was hearing their conversation, went inside and started putting on his clothes. Accused Hemsingh also went inside and informed Raju (PW-5) that he has murdered his mother by stabbing with sword in the stomach. ~~and~~ she died spontaneously. Hearing this she started weeping. Thereafter, she herself, her grandson Raju, son Ramadhar, daughters Champa & Radha and one Chhotu Pathak went to the house of accused/appellant at Ashoka Nagar, Sarkanda and saw that Janki Bai was lying on the ground and sword was stabbed in her stomach. On receiving this report, the Investigating Officer left for the scene of occurrence, took into possession the sword, blood stained soil & plain soil and broken bangles of deceased under Ex.P-2. He also took into possession one receipt under Ex.P-3. Accused/appellant gave memorandum Ex.P-5 while in the police custody regarding the lower undergarments & lungi and in

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pursuance of that same was got recovered by the accused under Ex.P-6. Panchnama (Ex.P-8) of the body was prepared, clothes of deceased were taken into possession under Ex.P-9. Body of deceased Janki Devi was sent for postmortem examination to Sardar Patel Hospital, Bilaspur where Dr. V.K. Verma (PW-12) conducted the postmortem on the body of Janki Devi and prepared the postmortem report Ex.P-10 in which he opined that the deceased died on account of asphyxia due to pressing of neck. The blood stained articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex.P-11 was received.

After completion of investigation, charge sheet was filed in the Court of learned Additional Chief Judicial Magistrate, Bilaspur who in turn committed the case to learned Sessions Judge, Bilaspur from where learned 6th Additional Sessions Judge, Bilaspur received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/appellant examined thirteen witnesses. Statement of accused/appellant was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. In reply to Question No.5 that he made extrajudicial confession before Raju (PW-5), he replied that he informed Raju that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his mother had died but the fact that he had murdered her was not stated by him.

Learned Additional Sessions Judge after hearing learned Additional Public Prosecutor & learned counsel for the accused convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment.

We have heard Smt. Siddique, learned counsel for the accused/appellant and Shri Deo, Additional Public Prosecutor for the State/respondent.

Learned counsel for the accused/appellant did not dispute the homicidal death of deceased Janki Devi, therefore, the homicidal death of Janki Devi is not in dispute. However, she argued that there is no eyewitness in the case and the prosecution case rests on the evidence of PW-5 Raju before whom the accused/appellant made extrajudicial confession, but PW-5 Raju has turned hostile and he has not stated that accused/appellant made extrajudicial confession regarding commission of murder of Janki Devi by him. As such, learned counsel for the accused/appellant submitted that therefore, there was no basis for convicting the accused/appellant in the crime in question, as there was no evidence.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of trial court.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The case of prosecution rests on the circumstantial evidence and in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

It is true that Raju (PW-5) has turned hostile and he has not supported the prosecution case regarding making of extrajudicial confession by the accused/appellant, but PW-6 Champa Bai has stated in her evidence that when her brother-in-law i.e. accused/appellant herein came to her house, he hit the cot of her mother with the foot and said that take the girl. Thereafter, Raju (PW-5) went inside and started putting on clothes, accused/appellant also went inside and started saying to Raju that he has murdered his mother and thereafter they went to

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the house of accused/appellant. In Para-4 PW-4 Champa Bai has stated that it is correct to say that her brother-in-law informed Raju that he has murdered his mother and the same was overheard by her. In Para-5 of cross-examination, this witness has stated that when her mother started weeping, she woke up and then her mother informed that my brother-in-law has murdered his wife. When the accused/appellant started telling to his son, then she woke up and it is incorrect to say that she had not overheard when the accused was telling his son Raju. Thereafter, this witness overheard whatever was stated by the accused/appellant to Raju. Even the making of extrajudicial confession by the accused/appellant before his son Raju (PW-5) stands established by the evidence of PW-1 Sumitra Devi who has stated that accused/appellant came in the morning and asked her to keep his two years old daughter Bhawna and on enquiry by her about Janki Devi, the accused/appellant said that she is at residence. When Sumitra Devi asked him as to whether he has killed Janki Devi, then accused/appellant evasively replied that whatever you understand. Thereafter, she asked her grandson & son to go and see at the residence of accused/appellant. When Raju (PW-5) went inside the house to put on the clothes, accused/appellant followed him and said to Raju that he has committed murder of his mother with the sword, then Raju informed PW-1 Sumitra

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Devi that his father has murdered his mother. Thereafter they left for Ashok Nagar along with his father i.e. accused/appellant.

Therefore, the evidence of PW-1 Sumitra Bai is admissible under Section 6 of the Evidence Act because whatever stated by the accused/appellant to his son Raju regarding murder of Janki Devi, mother of Raju was immediately informed by him to this witness i.e. grandmother of Raju. On hearing this, PW-1 Sumitra Devi went to the house of accused/appellant, but the same was locked and when police came, the house was opened and body of Janki Devi was found lying on the ground in the house and sword was stuck in her stomach. This is a house murder and PW-3 Mangal has stated that the Investigating Officer took into possession the sword after taking out the same from the stomach of Janki Devi and thereafter seizure memo (Ex.P-2) was prepared, but accused/appellant has not given any explanation that how Janki Bai was murdered in the house.

As per evidence of Dr. V.K. Verma (PW-12) there were abrasions round the neck, two injuries in the stomach which were caused by the sword, which was found stuck in the stomach and cause of death of Janki Devi was asphyxia due to strangulation.

Therefore, in view of the above circumstances that the murder was committed in the house of accused/appellant and no explanation came forward from the accused/appellant that how this crime was

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committed when he was in the house. Thereafter, the accused/appellant took his two years' daughter Bhawna in the wee hours to the house of PW-1 Sumitra Devi and handed over that girl to Sumitra Devi and on enquiry by Sumitra Devi that as to whether he has killed Janki Bai, the accused/appellant evasively replied that whatever you understand. Thereafter, accused/appellant went inside and informed his son Raju that he has murdered his mother. Even though Raju (PW-5) has turned hostile but he immediately informed his grandmother Sumitra Devi (PW-1) about the extrajudicial confession made by the accused/appellant and moreover, that extrajudicial confession was overheard by Champa Bai (PW-6). Even the clothes of accused/appellant were taken into possession by the Investigating Officer under Ex.P-6 and as per FSL report (Ex.P-11) same were found stained with blood.

In view of above circumstantial evidence, chain of circumstances is complete and that point towards the commission of crime by the accused/appellant, therefore, we do not find any illegality or infirmity in the judgment of trial Court. The appellant has been rightly convicted under Section 302 of the IPC for commission of murder of his wife Janki Devi and also under Section 27 of the Arms Act.

In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-